

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SCOTT D. SPILKY and PEACE CORPS,
Tangella, Sri Lanka

*Docket No. 97-1393; Submitted on the Record;
Issued December 11, 1998*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant abandoned his request for a hearing.

On June 27, 1994 appellant, then a 22-year-old former English teacher, filed an occupational disease claim, alleging that he sustained clinical depression beginning December 1, 1992 which was causally related to his federal employment. On November 29, 1994 the Office accepted appellant's claim for temporary aggravation of his preexisting depression. In a decision dated February 26, 1996, the Office found that the medical evidence of record did not demonstrate any temporary total disability after June 30, 1994 and that appellant's temporary aggravation of his preexisting depression had ceased as of June 1994. On March 17, 1996 appellant requested an oral hearing before an Office hearing representative. In a letter dated December 7, 1996, the Office advised appellant that his hearing was scheduled for January 29, 1997. By letter decision dated February 11, 1997, the Office notified appellant that he was deemed to have abandoned his request for a hearing under 20 C.F.R. § 10.137.

The Board has carefully reviewed the entire case record on appeal and finds that the Office properly determined that appellant abandoned his request for a hearing.¹

Section 8124(b) of the Federal Employees' Compensation Act² provides that a claimant not satisfied with a decision on his claim is entitled, upon timely request, to a hearing before a

¹ The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. As appellant filed his appeal with the Board on March 3, 1997, the only decision before the Board is the Office's February 11, 1997 decision; *see* 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

² 5 U.S.C. §§ 8101-8193.

representative of the Office.³ In the instant case, appellant made a timely *pro se* request for a hearing before an Office hearing representative.

The Office has the burden of proving that it mailed to a claimant notice of a scheduled hearing. It is presumed, in the absence of evidence to the contrary, that a notice mailed to an individual in the ordinary course of business was received by that claimant. This presumption arises after it appears from the record that the notice was duly mailed and the notice was properly addressed.⁴ Although appellant contends on appeal that he did not receive notification of the hearing because he had moved, the record does not contain any change of address information for appellant after his request for a hearing was filed, and the December 7, 1996 notice was sent to his last address of record.

In this case, the Office mailed appellant a notice of hearing dated December 7, 1996 to the appellant's address of record. The record contains a copy of this letter. Therefore, as it appears from the record that the notice was duly mailed to appellant and that the notice was properly addressed, the presumption arises that appellant received notice of hearing.⁵

Section 10.137 of Title 20 of the Code of Federal Regulations provides in relevant part:

“A claimant who fails to appear at a scheduled hearing may request in writing 10 days after the date set for the hearing that another hearing be scheduled. Where good cause is shown, another hearing will be scheduled. The failure of the claimant to request another hearing within 10 days or the failure of the claimant to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for hearing.”⁶

Appellant did not appear at the scheduled January 29, 1997 hearing, of which he had timely and proper notice, nor did he, within 10 days after the date of the hearing, give a reason for his failure to appear as required by the regulations. Therefore, the Office had sufficient reason to find that the request for a hearing had been abandoned.

³ 5 U.S.C. § 8124(b).

⁴ *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

⁵ *Id.*

⁶ 20 C.F.R. § 10.137(c); *see also* Federal (FECA) Procedure Manual, Part 2 – Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(d) and (e) (October 1992). The Board notes that under the Procedure Manual, the date of a request for the rescheduling of a hearing is determined by the postmark date.

The decision of the Office of Workers' Compensation Programs dated February 11, 1997 is hereby affirmed.

Dated, Washington, D.C.
December 11, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member